IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. ——.

DISTRICT OF COLUMBIA, *Petitioner*,

v.

ELIZABETH C. PACE, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

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OPINIONS BELOW.

The opinion of the Board of Tax Appeals for the District of Columbia (R. 2-4) is not reported. The opinion of the United States Court of Appeals for the District of Columbia (R. 131-136) is not yet reported in the official reports, *Pace v. District of Columbia*, —— App. D. C. ——, 135 F. (2d) 249.

JURISDICTION.

The ground for denial of this Court's jurisdiction sought to be invoked is that the Court below has given proper effect to an applicable decision of this Court, and, therefore, this Court should not further consider the question involved.

STATEMENT OF THE CASE.

The sole question presented in this case is the domicile of Charles F. Pace at the time of his death on March 20, 1940.

Said decedent came to the District of Columbia in 1913 to accept a position as an employee of the Federal Government (R. 111), not under civil service (R. 112), and continued as an employee of the Federal Government, not under civil service, until the date of his death, his employment requiring his presence in the District of Columbia (R. 112). His first position was in the Library of Congress, followed by positions in the Post Office of the Capitol, and in the Disbursing Office of the Senate (R. 112). From about 1916 until his death he occupied the post of Financial Clerk of the Senate (R. 112, 123).

In order to accept a more lucrative post in the Federal establishment (R. 123) he gave up his employment in a bank at Jacksonville, Florida (R. 111), and stored his household furnishings in a warehouse owned by himself in Starke, Florida (R. 116). About the same time he sold the old family home which he owned in Starke, Florida (R. 121).

Decedent was a single man (R. 103, 126) and, while sojourning in the District of Columbia, lived with his sisters, either in boarding houses or rented apartments (R. 121, 123) and, although his said sisters, one of whom is Respondent, and his brother frequently urged that he purchase a home in the District, he emphatically rejected all such urgings (R. 113, 114, 124).

Prior to his going to the District to enter Federal employment, decedent was the owner of valuable real estate in Starke, Florida, (R. 122) and subsequently he increased his real estate and mortgage holdings in Bradford, Clay and Duval Counties, Florida (R. 116, 122), until at the time of his death he owned real estate in said three counties valued at $30,294.82 (R. 81-84), and held mortgages on real estate in Clay and Duval Counties, Florida, valued at approximately $27,000.00 (R. 85-92), with a deposit in The Atlantic National Bank of Jacksonville of $8,416.79 (R. 92). On the other hand, he had with him in the District of Columbia only intangibles and a comparatively small bank account (R. 92-94). In addition, he had interest in three joint accounts with Respondent in District financial institutions (R. 21) the subject matter of this litigation.

During all his sojourn in the District, from 1913 until his death, decedent maintained his voting franchise at Starke, Florida, by registration and payment of poll taxes, and by regular voting in the primaries and general elections there (R. 47-56, 109, 112-114), and actively participating in political campaigns there (R. 113).

Decedent was a member of the Roman Catholic Church (R. 123), which neither requires nor permits membership, as such, in an individual local parish church, but *requires* attendance upon its services wherever such member may find himself on Sundays and Holy Days of Obligation.

Decedent was a valued employee of the United States Senate and maintained a sturdy loyalty to that body, which frequently constrained him to continue at his post when his true desire was to retire to his home in Florida (R. 112, 115, 125).

During all his sojourn in the District, decedent maintained lively contacts with his home town and state by correspondence (R. 41-45, 55-61, 66-74, 109, 113, 115, 119), newspaper subscriptions (R. 63, 109, 115) and contributions to worthy causes there (R. 56-61, 109). On the other hand, except for contributions to the Washington Community

Chest, considered a duty, he had no interest in the place of his sojourn (R. 115). He was there only because his work required him to be there.

STATUTES INVOLVED.

Section 4 (a) of Title IX of Chapter 223, 75th Congress—An Act to amend the District of Columbia Revenue Act of 1937, provides:

> "The decision of the Board may be reviewed by the Court (United States Court of Appeals for the District of Columbia) as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within 30 days after the decision is rendered. Such petition for review shall be filed with the Board, and shall be in such form as the Board by regulation shall provide. Upon such review the Court shall have the power to affirm, or if the decision of the Board is not in accordance with law, to modify or reverse the decision of the Board, with or without remanding the case for hearing, as justice may require. . . ."

Section 1, Article 1, Title V, of the District of Columbia Revenue Act of 1937, provides, in material part as follows:

> "Taxes shall be imposed in relation to estates of decedents, the shares of beneficiaries of such estates, and gifts as hereinafter provided:
>
> "(a) All real property and tangible and intangible personal property, or any interest therein, having its taxable situs in the District of Columbia, transferred from any person who may die seized or possessed thereof, either by will or by law, or by right of survivorship, and all such property, or interest therein, transferred by deed, grant, bargain, gift, or sale (except in cases of a bona fide purchase for full consideration in money or money's worth), made or intended to take effect in possession or enjoyment after the death of the decedent, or made in contemplation of death, to or for the use of, in trust or otherwise (including property of which the decedent has retained for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end

before his death (1) the possession or enjoyment of, or the right to the income from such property or (2) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom), to the . . . brothers and sisters of the whole or half blood of the decedent shall be subject to a tax as follows: 3 per centum of so much of said property as is in excess of $2,000 and not in excess of $25,000; 4 per centum of so much of said property as is in excess of $25,000 and not in excess of $50,000; 6 per centum of so much of said property as is in excess of $50,000 and not in excess of $100,000; 8 per centum of so much of said property as is in excess of $100,000 and not in excess of $500,000; 10 per centum of so much of said property as is in excess of $500,000."

Section 2 of said Article and Title provides as follows:

"The tax provided in section 1 shall be paid on the market value of the property or interest therein at the time of the death of the decedent as appraised by the assessor or, in the discretion of the assessor, upon the value as appraised by the probate court of the District. The taxable portion of real or personal property held jointly or by the entireties shall be determined by dividing the value of the entire property by the number of persons in whose joint names it was held."

SUMMARY OF ARGUMENT.

The Court of Appeals did not err in reversing and remanding the cause to the Board of Tax Appeals, such remand leaving the Board free to reach a decision on the facts before it in accordance with the principles of law as announced by this Court.

The Court of Appeals did not, in effect, hold that a person may have a domicile within a state without fixing such domicile at a particular place therein.

The facts in this case clearly show that decedent intended to and did maintain his domicile of origin in the State of Florida, as laid down in this Court's decision in *District of Columbia* v. *Murphy*, 314 U. S. 441, 62 S. Ct. 303.

ARGUMENT.

At the hearing before the Board of Tax Appeals it was conceded by counsel for both parties that

> "if it is found that Mr. Pace, the decedent, was domiciled in Florida there is no tax due and if he was domiciled in the District the tax is valid." (R. 109)

As stated by Petitioner in the opening statement in its brief as respondent in the Court below:

> "The *sole* question presented in this appeal is the domicile of Charles F. Pace at the time of his death on March 20, 1940."

The Petition now before the Court presents as its question #3:

> "Whether decedent, Charles F. Pace, was domiciled in the District of Columbia for purposes of inheritance taxation at the time of his death,"

and states that

> "The importance of the question is not limited to liability for payment of taxes, but extends to matters relating to the administration of estates, the granting of divorces, and the like."

However the Court below, in its opening statement says:

> "The *sole* issue we are called upon to determine, in reviewing the decision of the Board of Tax Appeals in this case, is whether Charles F. Pace was, at the time of his death, legally domiciled in Florida or in the District of Columbia." (Pace v. District of Columbia, ... App. D. C. ...., 135 F. (2d), 249.

In view of such statement, we seriously question that this Court will permit itself to consider matters collateral to the issue, regardless of how important such matters seem. Hence, Respondent assumes for the purpose of this brief, that the Court will consider only the issue of the domicile of the decedent for inheritance tax purposes and no other.

Addressing ourselves now to Petitioner's argument, we would respectfully bring to the Court's consideration Respondent's construction of this controversy, as gleaned from the record.

A.

We shall first consider question # 1, appearing on Page 4 of Petitioner's brief, being Chapter II of Petitioner's Argument (Petitioner's brief, page 27), the latter bearing the following caption:

> "The Court of Appeals erred in substituting its judgment for that of the Board of Tax Appeals when the Board's findings were made in accordance with the principles of law announced by this Court and are supported by substantial evidence."

Section 4 (a) of Title IX of Chapter 223, 75th Congress—An Act to Amend the District of Columbia Revenue Act of 1937, provides:

> "The decision of the Board may be reviewed by the Court (United States Court of Appeals for the District of Columbia) as hereinafter provided if a petition for such review is filed by either the District or the taxpayer within 30 days after the decision is rendered. Such petition for review shall be filed with the Board, and shall be in such form as the Board by regulation shall provide. Upon such review the Court shall have the power to affirm, or if the decision of the Board is not in accordance with law, to modify or reverse the decision of the Board, with or without remanding the case for hearing, as justice may require . . ."

The Court necessarily, in its review of the decision, must consider whether the Board has reached its decision based upon the facts by the application of the proper legal principles. The crux of this case is

> "Did the Board apply the proper legal principles announced by this Court in the Murphy case (District of Columbia v. Murphy, 314 U. S. 441, 62 S. Ct. 303) to the facts before it in this case?"

The Court below, in a carefully reasoned opinion, which thoroughly reviewed the evidence before the Board, reached the opinion

> "... that the record discloses that the Board erroneously concluded on re-hearing that the decedent had failed to overcome the presumption, arising from his 'living' in the District, that he was domiciled therein. The Petitioner (Respondent herein) amply sustained the requisite burden of proof that the decedent maintained his domicile in Florida. We expressly bottom our conclusion upon the opinion of the Supreme Court in District of Columbia v. Murphy."

Certainly if the Court finds that the Board's decision

> "... is not in accordance with law"

it is its solemn duty to reverse and remand the case to the Board, that it may reach a proper decision upon a re-examination of the facts before it by the application of the proper legal principles. The Court's failure to do so would be a denial of simple justice.

It is not for Respondent to justify the Court's decision in the Beedy case (*Beedy* v. *District of Columbia*, 73 App. D. C. 289, 126 Fed. 2d 647). The decision now before the Court squares in every respect with the holding in the Murphy case and there is, therefore, no justification for review under this Court's Rule 38 (5) (c).

Respondent, therefore, respectfully submits that the Court of Appeals did not err in reversing and remanding the cause to the Board of Tax Appeals, such remand leaving the Board free to reach a decision on the facts before it, in accordance with the principles of law as announced by this Court.

B.

We next consider question No. 2, appearing on page 4 of Petitioner's brief, being Chapter III of Petitioner's Argument (Petitioner's brief, page 31), the argument being captioned as follows:

> "The Court of Appeals erred in holding, in effect, that a person may have a domicile within a state without fixing such domicile at a particular place therein."

In the case of *Harvard College* v. *Gore* (1827) 5 Pick. (Mass.) 370, it is said

> "An inhabitant, by our Constitution and laws, is one who being a citizen dwells or has his home in some particular town, where he has municipal rights or duties, and is subject to particular burdens."

This Court, in the Murphy case (supra), holds that

> ". . . Congress did not intend that one living here (District of Columbia) indefinitely while in the Government service be held domiciled here simply because he does not maintain a domestic establishment at the place he hails from. Such a rule would result in taxing those unable to maintain two establishments, and exempting those able to meet such burden . . ."

The only possible reference in the record to decedent's claiming residence in the State of Florida, other than in the Town of Starke, is found in a single question addressed to the Respondent and the answer thereto.

> "Did you ever discuss where you would live in Florida?
>
> "Yes, he said St. Augustine or Jacksonville or Starke. He asked me which I would like and I told him it didn't make any difference to me." (R. 114, 115)

Against that, we find overwhelming evidence of decedent's maintenance, during all of said period, of residence in Starke, and the most that can be said for the testimony quoted is that Respondent had a choice of three places, to be decided at a later date, but it did not in any way bind decedent to renounced his own place of domicile. Furthermore, may we respectfully point out to the Court that all three places described, viz: Starke, Jacksonville and St. Augustine, are within fifty miles of each other, and are

comprehended within the metropolitan area of the City of Jacksonville, where the record shows (R. 111) decedent was employed before assuming his Federal post. In the light of the language of this Court's opinion in *District of Columbia* v. *Murphy* (*supra*), it would not appear necessary that one would be required meticulously to point out the address of a place of abode upon retirement, so long as, without change of his domiciliary intent, he returns to the immediate vicinity of the domicile which he enjoyed at the time of his entry upon Federal service. Respondent, therefore, respectfully submits that the Court of Appeals did not, in effect, hold that a person may have a domicile within a state without fixing such domicile at a particular place therein.

C.

We next consider question No. 3, appearing on page 4 of Petitioner's brief, being Chapter I of Petitioner's Argument (Petitioner's brief, page 13), captioned as follows:

> "Decedent, Charles F. Pace, was domiciled in the District of Columbia at the time of his death on March 20, 1940."

Respondent would respectfully point out to the Court that the decedent, Charles F. Pace, was not domiciled in the District of Columbia at the time of his death on March 20, 1940, and will discuss this matter under the same chapter sub-headings as used by Petitioner in its brief.

(a) Reasons for coming to the District of Columbia and manner of living therein (Petitioner's brief, page 14).

It is shown by the Record (R. 111) that decedent in 1913 was, and had been for some time a close friend of the late United States Senator, Duncan U. Fletcher, and that Senator Fletcher had expressed himself as being desirous of having decedent accept a position at the Capitol, which would require decedent to give up the position he held then

in a bank in Jacksonville, and in view of the fact that the brother and two sisters of decedent were then in Washington and decedent "was not making enough" in the Jacksonville bank "to take care of" his sisters, and the salary attached to the Federal post would be sufficient for that need (R. 124), decedent was pursuaded to accept the Federal post.

The record further shows (R. 112) that decedent from that time forward continued to hold positions of trust in the Federal establishment, not under civil service, continuously, from 1913 until his death, that the nature of his work, and his devotion to it (R. 114) kept him closely in Washington almost continuously. While it is true that the family home in Starke, Florida, was sold at about the time decedent accepted the Federal position (R. 121), it is to be noted that other members of the family—the brother and sisters—had before that year gone to Washington (R. 120), the brother by reason of his office in the Catholic University (R. 114, 124) and the sisters for the purpose of studying (R. 111, 120). It is further to be noted that the home was sold because

> "It was such a large place we didn't care to keep up such a large place. . . ." (R. 121)

a procedure specifically approved in this Court's decision in *District of Columbia* v. *Murphy* (*supra*; text, page 454 of 314 U. S.) and

> ". . . there were so many dear associations there that we did not want to go back in that house." (R. 121)

Obviously, the latter statement refers to the fact that the family had been broken by the death of the parents, a most natural feeling.

The record further shows that the decedent, during all his sojourn in Washington, lived in boarding houses or rented apartments (R. 113), and on frequent occasions refused to purchase a home there, or even to consider such

a purchase (R. 113, 114, 124), taking the position always that he proposed to return to Florida at the conclusion of his work for the Government (R. 114, 115, 116, 117, 119, 124, 125). It is shown by the record that decedent declined to permit his name to be considered for the office of Comptroller General—a fifteen year term—because he was not going to make Washington his home (R. 115).

(b) Relations to former place of abode (Petitioner's brief, page 15):

On the other hand, the record shows decedent to have maintained his registration and to have at all times voted in Starke, Florida, up to the time of his death (R. 47-56, 112, 113) and to have actively participated in political campaigns there (R. 113). While it is possibly true that his campaign interest was limited to the political fortunes of the two Florida Senators—Fletcher and Trammell—it is also true that he owed his position solely to the patronage of these two senators (R. 111-113). Petitioner has cited in its brief (page 15) decedent's activity in behalf of his home town—a village of less than 1500 (1940 census) and the record shows that he had no interest whatsoever in the City of Washington during his sojourn there (R. 115). Petitioner's statement in its brief (page 16) as to decedent's property holdings, is substantially correct, and we believe the Court could well take judicial notice that the personal property stored in Starke (R. 116), since 1913, would have no intrinsic value in 1940, though much sentimental value could and did attach thereto.

The record is barren as to decedent's membership in fraternal organizations, either in Washington or in Starke. The record shows that decedent was a member of the Roman Catholic Church (R. 123). It is a fact that membership in such church carries with it the definite obligation that the member regularly attend church (Mass) on every Sunday and Holy Day of Obligation regardless of where he may find himself at the time. In other words, the inflexible rule

of the Roman Catholic Church required decedent to attend Mass regularly in Florida when he was physically present there and when he sojourned in the District of Columbia or any other place the same inflexible rule required his attendance at Mass at a church in the locality where he found himself. In other words, decedent was a member of the *Roman Catholic Church*, and not a member of a local parish church in the same sense as membership in an individual local Protestant church implies.

As for his subscription to Florida newspapers (R. 63, 115) and his correspondence with friends in Florida (R. 41-45, 55-61, 66-74, 113, 115, 119), inasmuch as all his interests, as shown by the record, whether cultural, friendly or financial, were entwined with his home town and state, it was the natural thing for him to show that interest in the way he did. He certainly felt no sense of civic responsibility and had no interest in the place of his sojourn, Washington (R. 115), and, in fact, he seemed to disparage it (R. 114). Only his sense of duty to his post held him (R. 120, 125), although his real desire was to be in Florida (R. 113-117, 119, 124, 125), his home.

(c) Property and investments (Petitioner's brief, page 17).

The Record shows the nature of decedent's investments (R. 82-94) and it is to be noted that all his tangible and much of his intangible property (R. 81-94) was in Florida. The only property he had in the District of Columbia was stocks and bonds (R. 92, 93) which a person normally keeps near his person, for obvious reasons.

(d) Payment of taxes (Petitioner's brief, page 19).

Respondent admits that decedent paid some income taxes to the District of Columbia, but this was paid on the advice of one in whom he had confidence insofar as the interpretation of the income tax laws of the District of Columbia was concerned. While it is true that decedent was admitted

to the practice of law in Florida (R. 72), it is also true that he had not practised law since long prior to 1913, as he left the employ of a bank that year to enter Federal service (R. 111). Since the intangible and income tax laws of the District of Columbia were of somewhat recent enactment, decedent had had no more opportunity than the ordinary layman in the District of Columbia to be familiar with them, and naturally relied, as do many others, upon his banker (in this instance a tax expert, (R. 118)) for advice thereon. The payment of taxes by the decedent on the estate of his deceased sister Mary and by the Respondent to the Petitioner should have no bearing upon the question now before the Court, since decedent's sisters were residents of the District of Columbia (R. 117, 118).

(e) Transmission of will to Florida (Petitioner's brief, page 21)

Petitioner in its brief (pages 21, 22) overlooks the fact that the District Court, in determining the domicile of decedent, had before it in affidavit form much of the evidence that was later submitted to and considered by the Board of Tax Appeals (R. 40-65), as witness the certificate of the Registrar of Wills thereon (R. 65).

(f) Statements respecting domicile and intention to return to place of former abode. (Petitioner's brief, page 22)

While it is true that decedent's last will and testament began

> "I, Charles F. Pace, of the City of Washington, District of Columbia . . ."

such a statement is not conclusive as to domicile and is only an element to consider (*Wilberding* v. *Miller*, 88 Ohio St. 609, 90 Ohio St. 28, 106 N. E. 665, L. R. A. 1916A, 718, 726; *Ennis* v. *Smith*, 14 How. (U. S.) 400, 14 L. ed. 472, 483; 17 Amer. Jur. 643 (Domicil Sec. 91).

All of decedent's correspondence with people in Florida exhibited in the Record (R. 45, 59, 60, 69) demonstrates his steadfast intention to maintain his domicile in Florida. And, while not conclusive, the fact that, in the years prior to the enactment of the absentee voting law in Florida, he took the time to journey to Starke for the purpose of participating in the elections there (R. 47, 55, 113) and, later, upon the enactment of the absentee voting law in the state, he consistently exercised his right of franchise (R. 40, 47, 56, 112) by the casting of an absentee ballot, certainly is highly persuasive.

Respondent would further point out that Florida was decedent's

"domicile of origin"

and that the Record abundantly shows that nothing took place at any time during his life to change that domicile to the District, for, as this Court has well said

> ". . . a man does not acquire a domicile in the District simply by coming here to live for an indefinite period of time while in the Government Service." (District of Columbia v. Murphy, supra.)

(g) Domicile in the District of Columbia (Petitioner's brief, page 25).

Respondent has hereinabove discussed the payment by decedent of taxes to the District of Columbia and his reasons therefor. The true reasons for his going to the District have also been discussed. While it is true that he probably had a substantial estate at the time he declined the position offered him by the Jacksonville bank (R. 125), that estate was largely amassed subsequent to 1913 (R. 123), and also he felt a sense of responsibility to the Senate (R. 114, 119, 124, 125). In the light of the testimony, the residence of other members of decedent's family should have no weight.

As for Petitioner's argument (Petitioner's brief, page 26) relative to interrment, Respondent was most clear as to decedent's final resting place

"in the family lot"

in Jacksonville (R. 117).

Respondent, therefore, respectfully submits that she has squarely met all of the requirements to establish decedent's unwavering intention to maintain his domicile of origin in the State of Florida, as laid down in this Court's decision in District of Columbia v. Murphy (supra) and the lower Court so found (*Pace v. District of Columbia, supra*).

CONCLUSION.

In view of the foregoing, Respondent respectfully submits that this cause presents no such matter as to require review by this Honorable Court, and, therefore, the Writ of Certiorari sought by the Petitioner herein should be denied.

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taining a home in the District, that he was domiciled therein, and reversed its former ruling.

The Court of Appeals for the District of Columbia reversed. It accepted and applied our decision in *District of Columbia* v. *Murphy* and, weighing the facts in the light of its principles, concluded that the decedent was domiciled in Florida at the time of his death. The evidence before the Board of Tax Appeals took a wide range, and we do not think it is necessary to recite it in detail. As is usual in cases of contested domicile, it gave rise to conflicting inferences, and a decision either way would be supported by substantial evidence. Whether the Board's determination or that of the Court of Appeals should be deemed correct would depend upon the weight to be given to many different items of evidence, the credibility to be given to testimony, and the inferences to be drawn from many admitted events. We did not take this case to determine where Mr. Pace was domiciled. But the scope of review of decisions by the Board of Tax Appeals of the District of Columbia is important to the administration of the District's tax laws, and since that question was not reached or decided in *District of Columbia* v. *Murphy*, we granted certiorari in this case.

Congress has seen fit in certain of the District's tax statutes to make liability dependent upon domicile. In the District, where a large proportion of the population owe their presence to Government service and have the strongest motives for retaining their political connections with and domicile in the enfranchised community from which they came, this test of taxability is bound to give rise to innumerable and difficult conflicts. These the Board of Tax Appeals is authorized in the first instance to resolve.

The provisions for review of Board of Tax Appeals decisions present complexities almost as baffling as the test of taxability itself. Section 4 (a) of the Act creating the Board of Tax Appeals for the District of Columbia provides that its decisions may be reviewed by the Court of Appeals and that upon such review the court "shall have the power to affirm, or if the decision of the Board is not in accordance with law, to modify or reverse the decision of the Board, with or without remanding the case for hearing, as justice may require." 52 Stat. 371; D. C. Code (1940 § 47-2404 (a)). Had this been all, a strong case would be made for applying the rule of finality applicable to the Federal Board of Tax Appeals, now the Tax Court of the United States. *Dobson* v.

Commissioner, No. 44, this Term, decided December 20, 1943. However, the same organic act contains another and qualifying provision that is not to be found in the acts creating the Tax Court: "The findings of fact by the Board shall have the same effect as a finding of fact by an equity court or a verdict of a jury." 52 Stat. 371, D. C. Code (1940) § 47-2404(a). Since findings of fact by an equity court and the verdict of a jury have from time immemorial been subject to different rules of finality it is puzzling to know what the draftsmen of this section meant by including both in the one rule for reviewing Board of Tax Appeals findings.

This statute was enacted in May, 1938. The law at that time as to the review of findings of fact in equity was, as stated by Mr. Justice Brandeis for the Court, "in equity, matters of fact as well as of law are reviewable . . . ." *Virginian Railway Co.* v. *United States*, 272 U. S. 658, 675. Findings of fact by the trial judge of course were presumptively correct and were accepted by reviewing courts unless clearly wrong. *Butte & Superior Copper Co.* v. *Clark-Montana Realty Co.*, 249 U. S. 12, 30. This rule, however, did not deny power to the Circuit Court of Appeals to review facts, but rather went to the weight to be accorded to the findings of a lower court and had special pertinence where credibility of witnesses was involved. This Court had a well settled rule that "when two courts have reached the same conclusion on a question of fact, their finding will not be disturbed unless it is clear that their conclusion was erroneous." *Baxter* v. *Schofield*, 243 U. S. 114, 118. Such a rule would have no support in reason if the second court could not make its findings as a result of its own judgment.

The statute therefore authorizes review of findings of fact of the Board of Tax Appeals of the District of Columbia, subject to the admonition that they are to be undisturbed unless clearly wrong, if the findings are given the effect of findings of fact by an equity court. If the effect of the jury verdict, provided for in the same sentence, is to prevail, the review is much more restricted. The question as to which of the inconsistent provisions shall govern arises in a local statute confined in its operation to the District of Columbia. "We will not ordinarily review decisions of the United States Court of Appeals, which are based upon statutes so limited or which declare the common law of

the District." *Del Vecchio* v. *Bowers*, 296 U. S. 280, 285. Cf. *American Security & Trust Co.* v. *District of Columbia*, 224 U. S. 491; *United Surety Co.* v. *American Fruit Product Co.*, 238 U. S. 140. Where a local statute contains a conflict on its face as patent and as irreconcilable as this, where either choice seems equally supportable, we cannot say that the Court of Appeals commits error in assuming its review of the Board of Tax Appeals decision to be entitled to the scope of a review of an equity court.

After the Board of Tax Appeals statute, Federal Rule of Civil Procedure No. 52 was adopted, effective September 1, 1938. It provided as to all actions tried upon the facts without a jury: "Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses." This general rule, even if it were thought to modify the previous rule as to review of findings of fact in equity cases, would hardly supersede a special statutory measure of review applicable to a special and local tribunal.

We conclude, therefore, that the Court of Appeals has power to review decisions of the Board of Tax Appeals as under the equity practice in which the whole case, both facts and law, is open for consideration in the appellate court, subject to the long-standing rule that findings of fact are treated as presumptively correct and are accepted unless clearly wrong. The Court of Appeals therefore had power to set aside the determination of the Board of Tax Appeals if convinced, as it was, that the Board was clearly wrong. We are not called upon to separate factual from legal grounds of decision and to determine if reversal of the Board of Tax Appeals by the Court of Appeals could stand on questions of law alone. The judgment therefore is

Affirmed.

Mr. Justice BLACK and Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.